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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/085,115	03/01/2002	John W. Averitt	0101555.0507277	7222
26874 7590 12/29/2008 FROST BROWN TODD, LLC 2200 PNC CENTER 201 E. FIFTH STREET CINCINNATI, OH 45202				
EXAMINER FISHER, MICHAEL J				
ART UNIT 3689		PAPER NUMBER		
NOTIFICATION DATE 12/29/2008		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@fbtlaw.com

Office Action Summary

Application No.

10/085,115

Applicant(s)

AVERITT ET AL.

Examiner

MICHAEL J. FISHER

Art Unit

3689

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/88)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

Claim 18 is objected to as being in improper, dependent form. It is improper for a claim to depend on a claim from a different statutory class. Claim 18 is an apparatus claim while claim 17, from which it depends, is a method claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4,6,7,11,12, and 15-17 are rejected under 35 U.S.C. 102(e) as being anticipated by US PAT 6,446,053 to Elliot.

As to claim 1,16, Elliot discloses an open network system (fig 1) for automating an architectural process creating a contract (title), a graphic user interface (GUI) (aspects of the GUI are shown in figs 3 and 4), an attribute storage means (databases at 28, as best seen in fig 1), a filter for providing a GUI with filtered data (note the databases, regional would be filtered by region), a user database (to save the attributes, as best seen in fig 6), automated selection means for incorporating data with the user-selected attribute into a plurality of aspects of a contract document (fig 6) including a

schedule or repetitive parts (skylights, doors, garage doors, wall coverings, floor coverings) and specifications (materials and processes such as install porches, trenchings, formwork, etc. as shown in table 1, col 7 shows more clearly that the items in fig 6 are a schedule as listed in steps and phases and the steps in each phase delineate the specification of the structure such as "designate and install floor covering", designate and install fire sprinklers or not" and this is further described below the table in col 7, lines 65-66) and a document generation means for creating an aspect of the document (inherent in that the bid is generated, therefore, there would have to be a generating means as it is generated).

As to claim 2, Elliot discloses data entry means (50, as best seen in fig 1), attribute storage means (databases at 28, as best seen in fig 1), the user selects the attributes (such as whether or not to install fire sprinklers), remote attribution information storage means (at the user's computer), a filter (by phase), automated selection means that incorporates the data (as can be seen in fig 6), generating means for generating an aspect of the document (fig 6).

As to claim 3, Elliot discloses tracking a project (col 11, lines 39-47).

As to claim 4, Elliot discloses the system as searchable (inherent in that any database is "searchable" as the data is stored for later use, it must be "searchable" else the information could not be retrieved).

As to claim 6, Elliot further discloses as being useful for architectural work (building) and thus, would inherently be used for "architectural" matters, Elliot further discloses a drop-down menu (called "pull-down" menu in col 6, lines 17-20).

As to claim 7,17, Elliot discloses maintaining an association between a plurality of pieces of selectable, design information (28, fig 1), allowing a user, via their respective data entry locations (fig 1, 18, 14), to select an attribute (such as "region"), retrieving information in response to the user selecting that attribute (col 8, lines 3-8), storing user selections (inherent in that Elliot discloses various "phases" starting in col 7 and the previous phase would inherently and necessarily be saved else it could not be retrieved), generating one or more aspects of the document in a format (fig 6), Elliot further discloses "architectural drawings", although Elliot does not specifically call them "architectural drawings (col 6, lines 45-50, "...or from construction plans...", which would be architectural drawings).

As to claim 11, Elliot discloses allowing the user to select a manufacturer catalog page (34, as best seen in fig 1, for choosing materials), generating a schedule aspect containing the data (col 9, lines 32-35).

As to claim 12, Elliot discloses various formats (such as that described in col 8, lines 45-50 or in col 8, lines 19-25).

As to claim 15, Elliot discloses a catalog database (34, fig 1) and a drawing database (40, fig 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 5,8-10,13,14 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliot.

Elliot discloses a system and method as discussed above.

As to claim 5, Elliot does not specifically mention using industry accepted tags. It would have been obvious to one of ordinary skill in the art to use industry accepted tags as these are generally widely used and would allow users knowledgeable in the industry to use common terms.

As to claim 8, Elliot does not specifically mention equations associated with attributes. It is old and well known in the architectural arts that equations are important (to ensure a building will stand and also to ensure that material is not wasted making a building too strong). Therefore, it would have been obvious to one of ordinary skill in the art to modify the system as disclosed by Elliot by associating equations with relevant information to ensure the building is properly designed and built.

As to claim 9, Elliot discloses different views of the project (col 6, lines 45-50), but does not specify the type of views. "Plan" and "Elevation" views are old and well

known in the art, therefore, it would have been obvious to one of ordinary skill in the art to include 'plan' and 'elevation' views as these are used by architects to ensure their plans are correct, they would inherently have the previously mentioned 'vector equations' integrated as they tell the computer how the structure would react to gravity.

As to claim 10, Elliot discloses allowing a user to selectively preview and create architectural drawings (col 6, lines 45-50). It further would have been obvious to one of ordinary skill in the art to "automatically" create the drawings so the drawings could be read away from the computer, such as at the site where a computer might not be available.

As to claim 13, Elliot does not specifically mention the format for the interfaces. However, it is old and well known to use a spreadsheet to view data in a database, it is old and well known to use XML in a network environment, it is old and well known to use CAD in designing buildings and it is old and well known to use word processing with computers, therefore, it would have been obvious to use one of these formats as they are all old and well known and would therefore be familiar to those using the system.

As to claim 14, it is inherent that there would be a text editor, as text is added, this would be "editing". The attributes are linked as they are in databases (28, fig 1), it would be obvious to change the technical listing (including paragraphs and subparagraphs in the proposals) to reflect changes to ensure that they changes are saved, it further would have been obvious to one of ordinary skill in the art to use a text editor to edit text to ensure it is edited properly and to save the changes to ensure they are saved.

As to claim 18, Elliot further discloses indicating, via the schedule, to a contractor the type of finish to use for a door (col 7, table 1, "Designate and install materials to be used"), Elliot does not, however, teach the specification as indicating how the finish should be applied. It would have been obvious to include installation instructions to ensure that the finish was applied properly.

Response to Arguments

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL J. FISHER whose telephone number is (571)272-6804. The examiner can normally be reached on Mon.-Fri. 7:30am-5:00pm alt Fri. off.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3689

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael J Fisher/
Examiner, Art Unit 3689
MF
12/22/08